

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter	)	
	)	
Upper St. Clair Cablevision, Inc.	)	CUID No. PA1459 (Upper St. Clair)
d/b/a Adelphia Cable Communications	)	
	)	
Petition for reconsideration and	)	
refund plan	)	

**ORDER ON RECONSIDERATION  
AND REFUND PLAN ORDER**

**Adopted: March 14, 2002**

**Released: March 20, 2002**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration ("Petition") of our Order, DA 99-427 ("Prior Order"),<sup>1</sup> filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator") on April 9, 1999.<sup>2</sup> Our Prior Order resolved a complaint against Operator's August 1, 1998 cable programming services tier ("CPST") rate increase in the above-referenced community, and found Operator's CPST rate to be unreasonable. On April 9, 1999, Operator filed a refund plan in response to our Prior Order. In this Order, we grant Operator's Petition in part, modify our Prior Order and calculate Operator's refund liability.

2. Under the Communications Act,<sup>3</sup> Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992<sup>4</sup> ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act")<sup>5</sup> and our rules implementing the legislation ("Interim Rules"),<sup>6</sup> required that a complaint against the CPST rate be filed

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<sup>1</sup> See In the Matter of Upper St. Clair Cablevision, Inc. d/b/a Adelphia Cable Communications, DA 99-427, 14 FCC Rcd 3777 (1999).

<sup>2</sup> The local franchising authority filed an opposition to the Petition on April 19, 1999, and Operator filed a reply on April 29, 1999.

<sup>3</sup> Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

<sup>4</sup> Pub. L. No. 102-385, 106 Stat. 1460 (1992).

<sup>5</sup> Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>6</sup> See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 5937 (1996).

with the Commission by an LFA that has received more than one subscriber complaint.<sup>7</sup> The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.<sup>8</sup> The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.<sup>9</sup> If the Commission finds a rate to be unreasonable, it shall determine the correct rate and any refund liability.<sup>10</sup>

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.<sup>11</sup> Cable operators may justify rate increases on a quarterly basis using FCC Form 1210, based on the addition and deletion of channels, changes in certain external costs and inflation.<sup>12</sup> Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.<sup>13</sup> Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.<sup>14</sup>

4. In response to the complaint filed against its August 1, 1998 CPST rate increase, Operator filed an FCC Form 1240 ("1998 FCC Form 1240"). In our Prior Order, we made adjustments to Operator's 1998 FCC Form 1240 to conform the entries to Operator's previously filed FCC Form 1240 ("1997 FCC Form 1240"). Prior to that, we made adjustments to Operator's 1997 FCC Form 1240 to conform the entries to Operator's previously filed FCC Form 1240 ("1996 FCC Form 1240"). In its Petition, Operator argues that we should not have adjusted its 1997 FCC Form 1240 because we had already issued an order approving the actual CPST rate that Operator set based on the maximum permitted rate ("MPR") calculated on its 1997 FCC Form 1240. In that Order, DA 98-748,<sup>15</sup> we approved Operator's actual CPST rate, but we did not comment on any adjustments that we made to Operator's 1997 FCC Form 1240. Operator claims that it was unfairly prejudiced because we did not comment on any adjustments that might have been made to its calculated MPR in its 1997 FCC Form 1240. As we noted in our Prior Order, Operator filed separate 1997 FCC Form 1240s for the rebuild and non-rebuild portions of its franchise area.<sup>16</sup>

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<sup>7</sup> See Communications Act, Section 623(c), *as amended*, 47 U.S.C. Section 543(c) (1996).

<sup>8</sup> See Section 76.956 of the Commission's rules, 47 C.F.R. § 76.956.

<sup>9</sup> *Id.*

<sup>10</sup> See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

<sup>11</sup> See Section 76.922 of the Commission's rules, 47 C.F.R. § 76.922.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> In the Matter of Bethel Park TV Cable Company d/b/a Adelphia Cable Communications, DA 98-748, 13 FCC Rcd 8458 (1998).

<sup>16</sup> Prior Order at n. 14.

Our Order, DA 98-748, only resolved a complaint against the CPST rate Operator was charging in the non-rebuild portion of its franchise area.<sup>17</sup> On the other hand, our Prior Order resolved a complaint against the CPST rate Operator was charging in the rebuild portion of its franchise area. In our Order, DA 98-748, we were under no obligation to review or comment on the 1997 FCC Form 1240 that Operator filed in support of the CPST rate Operator was charging in the rebuild portion of its franchise area.

5. In its Petition, Operator also asserts that the Bureau should have deleted Operator's negative \$0.01 entry on Line 202 of Worksheet 2 of its 1997 FCC Form 1240 if it was going to adjust Line 201. We agree. Our adjustment to this entry results in a revised MPR of \$21.90 rather than the MPR of \$21.87 calculated in our Prior Order. Because Operator's actual CPST rate of \$22.04 exceeds its revised MPR of \$21.90, we find Operator's actual CPST rate of \$22.04, effective August 17, 1998 (the date of the first complaint) through March 31, 1999, to be unreasonable.

6. Our review of Operator's refund plan reveals that Operator failed to properly calculate the interest on its refund liability. Therefore, we calculate a refund plan as follows: For the period from August 17, 1998 (the date of the first complaint) through March 31, 1999, we calculate an overcharge of \$0.15 per month per subscriber. Our total calculation, including five percent franchise fees and interest calculated through April 30, 2002, equals \$8,668.00. We will order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

7. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS GRANTED IN PART TO THE EXTENT INDICATED HEREIN.

9. IT IS FURTHER ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that In the Matter of Upper St. Clair Cablevision, Inc. d/b/a Adelphia Cable Communications, DA 99-427, 14 FCC Rcd 3777 (1999) IS MODIFIED TO THE EXTENT INDICATED HEREIN.

10. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 and of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$8,668.00, plus interest accruing from April 30, 2002 to the date of refund, within 60 days of the release of this Order.

11. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 and of the Commission's rules, 47 C.F.R. §§ 0.321 and 76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson

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<sup>17</sup> *Id.*

Deputy Chief, Cable Services Bureau